

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARLOS ALVAREZ CHICAS, ALONSO VILLATORO,
MISAEAL ALEXANDER MARTINEZ CASTRO, ANGEL
MARTINEZ, EDWIN ULLOA MOREIRA and MATEO
UMAÑA individually and on behalf of all others similarly
situated,

**Case No. 21-cv-09014
(PAE)(SDA)**

Plaintiffs,

- against -

KELCO CONSTRUCTION, INC., KELCO
LANDSCAPING, INC., E.L.M. GENERAL
CONSTRUCTION CORP. D/B/A KELLY'S CREW, JOHN
KELLY and JOSEPH PROVENZANO,

Defendants.

DECLARATION OF MISAEAL ALEXANDER MARTINEZ CASTRO

I, Misael Alexander Martinez Castro, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I was employed by the E.L.M. General Construction Corp. d/b/a Kelly's Crew ("ELM") from about April 2016 until approximately December 2019.
2. I worked as a laborer and form setter. My duties included landscaping, cutting grass, planting, moving stones and metals and, construction. We would build rooftop parks. We would do planting at different parks also.
3. Kelco Construction, Inc. ("Kelco") and ELM share offices located at 25 Newton Place, Hauppauge, New York ("the Hauppauge facility").
4. The Hauppauge facility consists of offices, a prefabricated steel warehouse and storage facility, a yard (for storing mulch, topsoil, and other landscaping and construction

materials), shipping containers for storing tools and equipment, large waste containers, and a parking lot.

5. ELM performed much of its work in New York City. When I worked, Kelco Drivers and ELM employees (at least 30 in total) reported to the Hauppauge facility before 4:30 AM each morning. On rare occasions we would be expected to report at 4:00 AM or 5:00 AM.

6. Upon arriving at the Hauppauge facility ELM employees would load materials and tools needed to complete the work for that day, onto the company vehicles. An employee for each vehicle would then do an inventory of materials and tools to make sure everything was loaded. We would then all travel in the company vehicles to the jobsites in New York City. At the end of the day, we would all travel from the jobsite to the Hauppauge facility. When we arrived at the Hauppauge facility, we would unload any unused materials and tools from the truck. We would also unload waste and garbage which we had collected during the day and dump them into the waste containers located at the Hauppauge facility. We would make sure the trucks were cleaned and organized at the end of each day. At the end of the week, on Fridays, upon arriving at the Hauppauge facility, we would clean the inside and outside of the vehicles using soap, water, brushes, hoses, and vacuums which were provided by ELM specifically for that purpose.

7. Other ELM employees and I were not paid from the time we arrived at the Hauppauge facility until the vehicles were unloaded and cleaned at the end of the day. Instead, we were paid for the time we arrived at the jobsite. We were only paid from the time we were scheduled to start working at the jobsite (6AM or 7AM) until the time we left the jobsite, to return to the Hauppauge facility (which was usually 8 hours).

8. Milton, Christian, Angel, Antonio, Vicente, Gerson, and I, we would ask each other why we weren't being paid from the moment we arrived at the facility. We would talk and complain about the situation.

9. The reason why I believe all of my co-workers were only paid for the scheduled time is that we all spoke and knew we were getting paid the same way. Sometimes we would ask Barret, but he would brush off the question. Once he said that the ELM doesn't pay for travel time because they said that they were giving us a ride to get to work.

10. My primary language is Spanish. On December 21, 2022, this declaration was verbally translated to me into Spanish by Shirley Navarro-Losito.

11. I ask that the Court please authorize notice to my co-workers of the right to join this case.

I declare under penalty of perjury, that the foregoing is true and correct.

Dated: 12/22/2022



Misael Alexander Martinez

eSignature Details

Signer ID:	EoALFxc9anJHQxrMtqNvWWfd
Signed by:	Misael Alexander Martinez Castro
Sent to email:	misaelmartinez2345@gmail.com
IP Address:	172.58.228.242
Signed at:	Dec 22 2022, 2:58 pm EST